IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

FRIDAY, THE FIRST DAY OF JULY
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE RAMESH RANGANATHAN

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WRIT PETITION NO : 22706 of 1994

Between:

P.Surya Kumar, 801358 K NC(E), S/o. Late Lon Raju,
R/o. Sri Rangavaram Village & Post, Medchal Mandal,
Ranga Reddy District.

..... PETITIONER

AND

1 Air Officer -Commanding -in-cheif,

Headquarter Training Cammand,
Indian Air Force, Bangalore.
2 Chief of the Air Staff, Air Headquarters,
Vayu Bhavan, New delhi-11.
3 Commanding Officer,
14, Air Force Hospital, Hyderabad.

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue writ, order or direction more particularly one in the nature of Writ of Mandamus declaring the action of the 1st Respondent in passing the order of discharge vide his proceedings No. TC/C/9600/1/121/P1 dt.3.3.1993 and consequential relevant order dt.24.3.93 of the 3rd respondent as illegal, arbitrary and violative of Articles14 &16 of the Constitution of India and consequently direct the respondents to reinstate the petitioner into service with all consequential benefits forthwith.

Counsel for the Petitioner: MR.J.M.NAIDU

Counsel for the Respondents: MR.M.RANGA RAO

The Court made the following:

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ORDER:

The petitioner was appointed as Safaiwala in Non-Combatant (Enrolled) in the year 1984, in No.32 Wing, Air Force, Jodhpur. He was issued a show cause notice vide proceedings dated 05-12-1992 by the first respondent calling for his explanation as to why he should not be discharged under Rule 15(2)(g)(ii) of the Indian Air Force Rules 1969 on the ground that he had, during the span of eight years eleven months of service with the Air Force, been summarily tried and punished as many as on six occasions, out of which, four were red-ink entries. Paragraphs 3 to 5 of the said show cause notice dated 05-12-1992 reads thus:

> "AND WHEREAS you were initially warned by AOD 8 Wing in writing on 10 Mar 1989. Inspite of the warning you had committed yet another offence on 02 Jul 90 for which you were awarded 'Admonition' on 20 Jul 90. On taking up your case by No.8 Wing with HQ WAC for further action under the habitual offender policy, HQ WAC, while disposing of the case then had given you one more chance, which was conveyed to you vide 8W/2051/1/P1-NC(E) dated 31 Dec 91, wherein you were once again warned, counselling you to desist from act of indiscipline, as any further addition of punishment entry would result in initiating action for your discharge from the service. (Copies of warning letter attached as Appendix 'B' and 'C' to this show cause Notice).
>
> AND WHEREAS inspite of being given another chance, you have again indulged in the following act of indiscipline and have been awarded '07 day detention' for the same on 07 Apr 92 by AOC, 8 Wing, AF.
>
> (a) Beaten Mess Boy Karam Vir causing him injury under the influence of liquor while on duty at 1 Airmen Mess on 07 Jan 92.

(b) Created nuisance in public place under the influence of liquor at 0100 h on 28 Mar 92.

AND WHEREAS perusal of your conduct sheet indicates that you are not amenable to service discipline."

The petitioner submitted his explanation to the aforesaid show cause notice. Not being satisfied therewith, the first respondent discharged him from service vide proceedings dated 03-03-1993, which is the subject matter of challenge in this writ petition.

It is the case of the petitioner that he could not have been discharged from service without an enquiry being conducted into the alleged acts of misconduct and that this power conferred on the authorities to discharge a person on the ground that he is a habitual offender applies only to the combatant category and not to persons in the non-combatant category.

Sri J.M.Naidu, learned counsel for the petitioner submits that since the petitioner falls under the non-combatant category, Rule 15 has no application and that the order of discharge is liable to be set aside.

A counter affidavit is filed by Sri K.N.Nair, wherein the various offences committed by the petitioner are set out in detail. It is stated that despite repeated warnings, the petitioner continued to commit the offences, which is not conducive to a highly disciplined defence organization and therefore the petitioner was discharged from service. It is further stated in the counter affidavit that discharge of a person under the 'Habitual Offenders' Policy has been upheld by the Supreme Court in the case of **Ex.Sgt. Mehta** v **Union of India** in C.M.P.No.15050 of 1987 in SLP (Civil) No.6821 of 1987 and that the said policy does not constitute double punishment.

Learned counsel for the respondents refers to the judgment of the Supreme Court in ***UNION OF INDIA*** v. ***CORPORAL A.K.BAKSHI***, wherein the Supreme Court has upheld discharge of Air Force personnel for being habitual offenders. The Supreme Court held that the policy for discharge envisages that in cases where an airman has been awarded such punishments six times he is to be treated as a habitual offender and action for discharge from service should be taken against him under Rule 15(2)(g)(ii) of the Rules, that this action for discharge is not by way of punishment for misconduct for which he has already been punished, that the basic idea underlying the policy of discharge is that recurring nature of punishments for misconduct imposed on an airman renders him unsuitable for further retention in the Air Force, and that the discharge in such circumstances is, therefore, discharge falling under Rule 15(2)(g)(ii) and it cannot be held to be termination of service by way of punishment for misconduct.

The judgment of the Supreme Court in ***CORPORAL A.K.BAKSHI's*** case (1 supra) squarely applies to the facts of the present case. It is clear from the show-cause notice dated 05-12-1992, more particularly, the paragraphs referred to supra that the petitioner was punished on six occasions necessitating his being discharged from service.

In reply to the contention of Sri J.M.Naidu that the circular of the Indian Air Force, empowering them to discharge Airmen from service for habitual offences, applies only to combatants and not to non-combatants, learned counsel for the respondents placed before this court a circular dated 11-09-1987 wherein the policy, which earlier applied only to combatants, has been extended to non-combatants also. It is thus clear that the respondents are entitled to take necessary action for discharge of

habitual offenders, even where such persons belong to the non-combatant category. The writ petition challenging the order of discharge therefore fails and is dismissed.

Sri J.M.Naidu, learned counsel for the petitioner contends that even if the order of termination of discharge is upheld, the petitioner is entitled to certain terminal benefits, which has not been paid to him. Needless to state that if any terminal benefits are due, it is open to the petitioner to submit his representation furnishing details of the amounts which he is entitled to and the respondents shall consider and pass appropriate orders within three months from the date of receipt of such representation.

The writ petition is accordingly dismissed. No order as to costs.

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01-07-2005

Prv

To

1 The Air Officer -Commanding -in-cheif,

Headquarter Training Cammand,
Indian Air Force, Bangalore.

2 The Chief of the Air Staff, Air Headquarters,
Vayu Bhavan, New delhi-11.

3 The Commanding Officer,
14, Air Force Hospital, Hyderabad.

4 Two CD copies

5 1 CC to MR.GANGA RAO